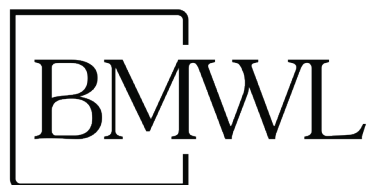


HURRICANE AID PAYMENTS TO EMPLOYEES MAY QUALIFY AS TAX-FREE BENEFITS IF THEY ARE “QUALIFIED DISASTER RELIEF PAYMENTS”

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Hurricane Aid Payments to Employees May Qualify as Tax-Free Benefits if They Are “Qualified Disaster Relief Payments”

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Certain types of assistance that employers provide to employees affected by a federally declared disaster are exempt from federal income and employment taxes under a special provision of the Internal Revenue Code. “Qualified disaster relief payments,” as described in Internal Revenue Code Section 139, include payments by employers to employees for:

1. Reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a “qualified disaster” and
2. Reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence or repair or replacement of its contents to the extent that the need for such repair, rehabilitation, or replacement is attributable to a “qualified disaster.”

Qualified disaster relief payments are nontaxable to employees only to the extent that the expenses covered by such payments are not compensated for by insurance or otherwise.

A “qualified disaster” includes disasters that are determined by the President of the United States to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. These “federally declared disasters” are identified on the Federal Emergency Management Agency’s (FEMA) website (see <https://www.fema.gov/disasters>). The FEMA website lists disaster areas that qualify for individual assistance and public assistance. Based on our analysis of the statute and related authority, we believe that it is reasonable to treat employees as eligible to receive tax-free “qualified disaster relief payments” if they

live in areas that have been identified by FEMA as eligible for **individual** assistance. Without further authoritative guidance, we do not have the same confidence regarding areas qualifying for **public** assistance only.

The provision of assistance by an employer to an employee can be in the form of cash or services, and under the law, no substantiation from the employee is required. The minimal administrative requirements allow employers to react quickly to help the immediate needs of their employees. While the law does not require substantiation to be collected by the employer from the employee, we recommend that employers maintain reasonable documentation supporting the basis for their belief that the aid meets the definition of qualified disaster relief payments. From a practical perspective, we believe it would be a helpful practice to require an employee receiving such a payment to certify in a signed document that:

- The employee has incurred expenses of the types described in Items 1 and/or 2 above,
- That the expenses were attributable to the identified qualified disaster,
- That the expenses incurred are or are expected to be equal to or greater than the amount of the payment by the employer, and
- That the expenses have not been and will not be reimbursed by insurance or otherwise.

Applicability to Hurricane Ian

On September 29, 2022, Florida and parts of South Carolina were designated as federally declared major disaster areas due to Hurricane Ian, with certain counties eligible for both individual and public assistance and certain counties eligible for public assistance only. We believe it is reasonable for employers to treat employees who live in counties eligible for individual assistance and who incurred damages related to Hurricane Ian as eligible to receive a nontaxable qualified disaster relief payment, subject to the other applicable requirements of the law described above.

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